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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-seventh session

SUMMARY RECORD OF THE 20th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 August 1995, at 10 a.m.

Chairman: Mr. MAXIM

later: Mr. EIDE

later: Mr. MAXIM

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GE.95-13623 (E)

The meeting was called to order at 10.15 a.m.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued) (E/CN.4/1995/17 and 83)

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1995/3-6; E/CN.4/Sub.2/1995/NGO/5 and 25; E/CN.4/1995/81)

1. Mr. BOUTKEVITCH, speaking under agenda items 3 and 4, observed that the wording of item 4 implied that there were fields with which the Sub-Commission should not be concerned. However, in view of its mandate to defend human rights in general and to do so impartially, it was for the Sub-Commission itself to decide which topics it would address. It would be recalled that one of the recommendations considered by the open-ended working group of the Commission on Human Rights convened pursuant to resolution 94/111 had been that the independent status of the members of the Sub-Commission should be reinforced. Their independence should be taken to mean their freedom to comment on matters on their agenda. In practice, however, some fields with which the Sub-Commission had been concerned had emerged from the ongoing monitoring of specific human rights situations. Commission decision 1995/107 had cautioned that the Sub-Commission should consider the impact of its work on human rights and that it should restrict itself to issues that were within its own competence: in his view, its competence extended to humanitarian issues and to the defence of human rights in general. What the Sub-Commission did had an impact on human rights work within the entire United Nations system. The Sub-Commission's scope was limited only by its members' physical and intellectual capabilities, and in that sense, it should not overload its agenda.

2. There were, however, no human rights issues that were within the purview exclusively of other bodies: the Commission, for instance, dealt with humanitarian activities, but there was no way that the Sub-Commission could thoroughly examine information concerning alleged human rights violations - as the Commission had requested of it in resolution 1995/26 and in previous resolutions - if the humanitarian area were declared off limits. The Sub-Commission had been asked in that same resolution to continue to give due regard to new developments in the field of human rights. Humanitarian activities had, in fact, from the legal point of view, raised new issues to which adequate attention was not being paid elsewhere in the United Nations system, or indeed anywhere else, except by the International Institute of Humanitarian Law in Italy and perhaps a few other non-governmental institutions. A distinction, for instance, had to be drawn between humanitarian assistance and humanitarian intervention - a form of interference. The whole structure of relations between humanitarian donor and recipient had to be analysed and its effectiveness in channelling assistance to those for whom it was intended and in actually improving emergency situations. The rights of the recipient country needed to be looked at legally, in view of recent attempts by Governments to prevent help from reaching victims because they claimed it constituted interference in their internal affairs. It was not at all clear that the Commission rather than the Sub-Commission had the mandate to consider humanitarian actions as they affected human rights.

3. What was clear, however, was that the Commission had not adequately heeded the Sub-Commission's insistence on the need to address certain important problems. If one reviewed the background since 1993 of the Sub-Commission's consideration of the recognition of gross and large-scale violations of human rights as an international crime, a topic on which Mr. Chernichenko had worked extensively, it was obvious that the Commission did not even recognize the opportuneness and importance of such consideration, qualifying it, in decision 1994/103, as premature and declining, in decision 1995/111, to appoint a special rapporteur on the question. Surely, however, if the Sub-Commission's warnings about the international nature of certain crimes had been taken into account and if the legal definition of what constituted such offences had been clarified, the Commission would not have been following an apparent double standard on the matter, and some of the cynical abuses of human rights witnessed in recent times in the world might have been averted. The Sub-Commission was not going beyond its sphere of competence in recommending that Mr. Chernichenko should prepare a full-scale report in that crucial area as special rapporteur, and it should certainly be allowed to follow up on its own recommendations. The discussions as to whether international crimes should be defined as those committed not merely by Governments, but also by the judicial branch, and by agencies of the Government acting insubordinately, or also, as he himself would argue, by individuals, terrorist organizations, and others not in positions of power - had underscored the many grey areas that remained and hence the need to study the issue closely so as to arrive at a definition of such crimes as fell within the Sub-Commission's competence. United Nations bodies must not be set in their ways, mired in past stances; and there should not be such a hard-and-fast definition of their mandates.

4. International crimes interrupted the normal functioning of international law and often resulted from a failure to honour commitments. They differed from other crimes in being particularly dangerous violations of international law, and were recognized as such after the event. The Nürnberg definitions were obsolete and needed to be reconsidered. Whereas the Security Council dealt with violations as they were occurring and sought to assign political responsibility, the Sub-Commission's task would be to look at the human rights aspects of international crimes and determine legal responsibility. The Sub-Commission had in resolution 1994/11 recommended the adoption by the General Assembly of the draft statute for an international criminal court to deal with crimes against humanity, and perhaps the report that would be prepared by the Sub-Commission's Special Rapporteur would be a step in the same direction.

5. Mr. JOINET, commenting on certain points made by Mr. Fan Guoxiang at the previous meeting under agenda item 4, said that he fully agreed with his underscoring of the independence of the members of the Sub-Commission and the democracy that reigned in its proceedings. Independence did not mean, of course, that experts must never agree with the position taken by their own Governments, but rather that they must always speak from their own convictions. As a member of the Sub-Commission and especially as chairman of a working group, he had had occasion himself to defend the independence of colleagues who had written country reports as special rapporteurs, and he had appreciated Mr. Fan Guoxiang's defence of Mr. Glélé-Ahanhanzo.

6. He had some reservations, however, about Mr. Fan Guoxiang's concern that the Sub-Commission would become a kind of "NGO forum" if too much time was given to statements by non-governmental organizations. The Sub-Commission, however, was the one place in the United Nations where such organizations could best be heard, and even though some might abuse that privilege, he did not believe that it was wrong in principle to give them the opportunity to speak.

7. Mr. Fan Guoxiang had said that some non-governmental organizations were very prejudiced and politicized. Indeed, that kind of accusation had over the years been levelled often against the experts themselves. Experience had shown that allegations by non-governmental organizations described at the time as slander or exaggerations had later been proved true. One need think only of the allegations regarding disappearances in Argentina or Chile or regarding the situations in countries like Haiti and Romania under the former regimes, so vociferously denounced by government representatives at the time. There had perhaps on occasion been some political infiltration of non-governmental organizations allowed to address the Sub-Commission, but that was inevitable when operating within a framework of freedom of opinion and expression. The real danger was when the political manipulation was concealed. He himself had been able to ascertain instances of non-governmental organizations that were, as it were, remote-controlled by the Government of a country and took instructions directly from it. At the World Conference on Human Rights in Vienna as well, many groups in the guise of non-governmental organizations had been set up by the Governments themselves, one of them, in fact, led by a high Chinese official currently present in the meeting room. The problem of lack of genuine independence among non-governmental organizations had to be viewed, if at all, in all its aspects.

8. Mr. Fan Guoxiang had also objected to the fact that one person sometimes spoke for more than one non-governmental organization. The Sub-Commission had decided to allow that practice, provided it was informed in advance, since it realized that the practice had come about for financial reasons, non-governmental organization funds being often very limited. The practice did not in itself constitute a manipulation.

9. Lastly, Mr. Fan Guoxiang had expressed regret at the activities of a United Nations staff member. He had made inquiries and had ascertained that the person in question was in fact not a member of the United Nations staff. Consequently article 1.3 of the Staff Rules did not apply in that case. If the inquiry requested by Mr. Fan Guoxiang into the case - presumably an administrative inquiry - were to be held, he would like the opportunity to testify before it.

10. Mr. HATANO noted that in three years' time, the Sub-Commission would be celebrating its own fiftieth anniversary and wondered whether its achievements during the 47 years of its existence thus far truly merited celebration. In his opinion, a serious review of the Sub-Commission's work was in order. While the Sub-Commission had adopted on average 50 to 60 resolutions every year, of which 20 had been directed against particular Governments, and approved numerous thematic studies, it needed to be pay more attention to the quality of its work and the real advances achieved in the field of human

rights. The Sub-Commission was part of the United Nations, a political body, and had to show that it was contributing to tangible progress in the real world.

11. To assess that progress, it needed to ask how many Governments had actually responded positively to its resolutions without additional outside pressure. The answer, regrettably, was very few, and the Sub-Commission's influence on Governments appeared to be minimal. An exceptional case had been that of Japan whose Government in the late 1980s had enacted a new Mental Health Law, replacing previous legislation, purely in response to a recommendation by the Sub-Commission. On the other hand, the absence of any resolution from the Sub-Commission concerning the so-called "comfort women" of the Second World War had not prevented the Japanese Government from setting up a foundation to provide compensation to those women. Despite the claims of certain non-governmental organizations, and without any direct pressure from outside, the Japanese Government had also taken measures to ensure that school textbooks did not ignore the issue of the comfort women and attempted to inform students of what had happened during the war. The majority of history textbooks prescribed by the Ministry of Education for use in senior high schools now devoted some attention to the issue, although it was thought undesirable to bring up such issues with students below the age of 15. That suggested that the Government, the public and the publishing companies were relatively open-minded when it came to discussions of their past history and to the sort of views which had been expressed by the Sub-Commission.

12. He noted that although the Sub-Commission had passed numerous resolutions, it had done little to ensure that they were implemented. It might therefore be appropriate to reduce the number of resolutions considered and devote greater efforts to their implementation. The question was how? The Sub-Commission had no legal authority and no physical power to compel States to comply. Its only power was that of persuasion. Too often in the past, the Sub-Commission had tended to act as "prosecutor", rather than providing positive encouragement to States to implement resolutions and recommendations. It should therefore consider ways of acknowledging those Governments which had been most diligent in implementing resolutions and made the greatest progress in human rights.

13. The Sub-Commission was largely dependent on information supplied by non-governmental organizations. While their contribution was greatly appreciated, the information given by some NGOs in their interventions was unreliable and often provoked immediate and categorical refutation by government observers speaking in exercise of the right of reply. The Sub-Commission clearly needed to encourage more balanced and less easily refuted NGO statements.

14. He noted that the Sub-Commission's decision to consider agenda item 6 first, following a proposal by Mr. Lindgren Alves, appeared to have paid off and had to some extent streamlined the Sub-Commission's work. In order to achieve even greater efficiency and reduce duplication, he proposed that the Sub-Commission at its next session should devote at least two closed meetings involving only the experts and alternates to a discussion of ways in which the

Sub-Commission's work could be further streamlined. If real progress were made in that area, the Sub-Commission might then be able to move more confidently towards its fiftieth anniversary.

15. Mr. EIDE said that he personally looked forward with great satisfaction to the fiftieth anniversary of the Sub-Commission which, in his view, had made a significant contribution to the development of human rights. Inter alia, it had been responsible for the initial drafting of the Convention on the Elimination of All Forms of Racial Discrimination and had put forward many ideas which had subsequently formed the basis of the work done by a number of other United Nations bodies. In some cases, as in El Salvador or Guatemala, resolutions passed by the Sub-Commission had played a significant part in bringing about real change, although no one would claim that they had been the only factors. On the other hand, there were still undeniably some procedural weaknesses. The decision to consider agenda item 6 first appeared to have been justified but there still appeared to be a need for greater structure in the discussion with more time for the non-governmental organizations to prepare their interventions.

16. He had some reservations about the statement made by Mr. Fan Guoxiang at the previous meeting. In particular, he did not share the concerns expressed by Mr. Fan regarding the role of non-governmental organizations. He held the view that NGOs had in fact played a vital role in the evolution of human rights. It was obvious that there were different kinds of NGOs, some of them concentrating on thematic issues and contributing ideas which were taken up in the Sub-Commission's own discussions while others concentrated on particular country issues. The Sub-Commission was perfectly aware of such differences and its members could take them into account when evaluating the information provided by an NGO. In any case, the Sub-Commission had other sources and did not need to take at face value the information supplied by any one NGO.

17. Regarding one of the points raised by Mr. Fan Guoxiang, he said that prior to the end of the cold war, there had been cases of staff members clearly being influenced by their Governments. He hoped that situation no longer existed. However, if an investigation were to be conducted into the questions of whether staff members were influenced by NGOs, it would also be necessary to look at whether Governments influenced them, since a Government was likely to have a much more serious impact than a small and weak NGO.

18. Mr. Boutkevitch had made a number of very important points. He had rightly emphasized the need for Mr. Chernichenko's proposed study to adopt a broad approach and to consider not only the role of the various parts of the executive branch in human rights violations but also the role played by the judiciary and the legislature. He also agreed with the need to look beyond violations perpetrated by government forces and to consider the often very serious violations committed by non-government forces which constituted a de facto authority such as the Pale Serbs in Bosnia, which were already before the International Tribunal or by forces controlled by certain separatist movements such as the Tamil Tigers.

19. Mr. CHERNICHENKO said that he supported the suggestion made by Mr. Hatano that two closed meetings should be devoted at the next session to a discussion of working methods as a way of saving the Sub-Commission's time. He also



hoped that the members of the Sub-Commission would give some thought to ways of reforming the human rights bodies in order to make them more efficient and responsive.

20. He greatly valued the comments made by Mr. Boutkevitch and Mr. Eide on his proposed study, and would take full account of them if his mandate were reconfirmed. In particular, he considered that "Government" should not be understood in the narrow sense of the executive branch, but in the broader sense of State authority.

21. He noted that Mr. Eide had raised the very complex issue of "de facto authority" in suggesting that forces other than those of the State should be liable for prosecution for human rights crimes. It was, however, important to bear in mind the fact that "international crimes" were defined according to established doctrine as crimes committed by States, that is, with the consent and support of Governments, which alone could be subjects of international law. Attempts to place particular separatist movements, for example, on the same footing by referring to them as "ad hoc subjects of international law" carried with them the risk of legitimizing them. As matters stood, such movements could perhaps be made criminally responsible for their acts of violence which were to be understood as "crimes under international law" rather than "international crimes". For that reason, he believed that the suggestion needed careful consideration in his study.

22. Mrs. PALLEY said that she intended to talk about the work of the Sub-Commission and the future. Her theme was institutions and not persons or personalities. She assured her colleagues that anything she said did not reflect on them. When persons were unable to answer a logical argument they diverted from them by personal attacks. She associated herself with Mr. Joinet's earlier comments. She agreed with Mr. Eide about the useful historical contribution of the Sub-Commission but today her theme was "Anything we can do they can do better". She was referring to the Commission which had changed. During the cold war, the Commission had been very reluctant to deal in any depth with human rights issues. Over the last five or six years, the Commission had completely changed its attitude. She believed that the member States of the Commission and other States had internalized human rights values, partly because of the dissemination of standards and the many treaties to which they were parties, and had become much more active in the human rights sphere.

23. The United Nations human rights budget was very small and must be used in the best possible way to further the cause of human rights; hard choices might have to be made. A session such as the present one entailed huge costs, particularly in respect of translation and services. The right way to tackle the problem would be to have a second three-week session of the Commission each year, possibly in September, in New York. A session in New York would also enjoy far better international press coverage than one in Geneva. Another consideration was the fact that direct dialogue with States was likely to be more effective than anything done within the Sub-Commission. States often showed a flexibility, open-mindedness and a willingness to modify their policies. Independent experts, on the other hand, held certain views and values but could not be as up to date as States were on certain issues.

24. With regard to the specific functions of the Sub-Commission, the annual report produced by the Chairman-Rapporteur showed that all its debates under the various agenda items resulted in resolutions which were consulted subsequently by members of the Commission in order to ascertain what needed to be done at the following session of the Commission. Unfortunately, she did not believe that the States in the Commission really made use of the summary records of the debates in the Sub-Commission. They looked afresh at the issues and held a fresh debate. Consequently, a good deal of the debate in the Sub-Commission appeared to be a waste of time.

25. All the functions that made up the Sub-Commission's work - the public scrutiny of country situations under agenda item 6, the confidential consideration of country situations under the 1503 procedure, the discussion of thematic issues by working groups and the preparation of studies and the setting of new standards - could be usefully transferred to the Commission. In the examination and resolution of country situations, it would be better for States to be dealt with by other States, and if the Commission were to meet twice a year, say in March and September, a more consistent coverage of country situations could be provided and NGOs would have more opportunities to present their cases to Governments. It should be borne in mind that all experts, including the speaker herself, tended to become self-important, spending much time preparing and negotiating draft resolutions; however, experts did not really matter, whereas Governments did.

26. The Sub-Commission acted as a filter for the Commission, but its debates were not of very great value. If the Sub-Commission's working groups were transferred to the Commission, a real dialogue affecting the conduct of States could take place. National delegations in the Commission contained adequate experts to service the working groups. Work of the kind done on indigenous peoples by Mr. Eide and Mrs. Daes would properly not have originated in the Commission but, on the other hand, Mr. Eide's studies on minorities might have been accepted. It was better for there to be work in the Commission with a dialogue which affected attitudes over time. One did not know how the Commission would treat the reports on the indigenous. Furthermore, in the past, the Sub-Commission had had the resources to help the studies, but nowadays, the Sub-Commission's experts produced studies on a part-time basis without pay and without much help from the Secretariat. Such studies would be better financed under the auspices of the Commission. Despite the Commission annually exhorting the Sub-Commission to undertake studies concerning new developments, when interesting new studies were proposed, a little chopper was taken out and such new studies were usually turned down, as had happened in the case of her proposed study on the humanitarian implications of human rights and Mr. Chernichenko's proposed study on human rights violations as an international crime. If new ventures originated in the Commission, however, they would go better. In a situation in which funds were limited, there was no area of work covered by the Sub-Commission that would not be more effectively covered by the Commission. The functions of the Sub-Commission should therefore be merged into the Commission.

27. Mr. ALI KHAN, after outlining the general legal framework for the protection of human rights in the United Nations system, said that it was necessary to ensure that States which violated human rights were made accountable in international law. The important concept of territorial

sovereignty in the case of international crimes implied that a State whose territory was used for the commission of an international crime could not be absolved of its responsibility. Bodies such as the Commission on Human Rights and the Sub-Commission could make significant contributions to international criminal jurisprudence. It should be borne in mind that the international criminal court, if it ever came into existence, would be primarily concerned with the responsibility of States. In any case, both the Commission on Human Rights and the Sub-Commission would have to be strengthened in order to ensure that States which violated human rights were brought to account. In particular, the rights of vulnerable groups and minorities must be safeguarded.

28. He fully agreed with Mrs. Palley's comments on the Sub-Commission's experts. It was a well-established principle in international law that once they had taken up their positions, international civil servants owed no allegiance to the Government of their country of origin or to that of any other particular country. The Sub-Commission's experts, although they did not fall fully within the category of international civil servants, must be able to perform their international functions independently, free from the pressures of Governments.

29. He also agreed with Mrs. Palley's view that a second session of the Sub-Commission should be held in New York, since a one-month session in Geneva was far too long. It would be better to hold a two-week session focused on general discussions in Geneva and then, some four to six months later, another two-week follow-up session in New York, which was the hub of so many activities and the seat of the United Nations bodies that really mattered, well covered in the media.

30. Unfortunately, at present there was an absence of dialogue in the Sub-Commission. The working groups could perhaps go a step further and initiate negotiations with the States concerned or even engage in conciliation and mediation proceedings.

31. Non-governmental organizations played a vital role in the protection of human rights, but he doubted whether they were documenting their positions adequately. In any case, only organizations that were genuinely interested in the protection of human rights should be allowed to take part in the Sub-Commission's proceedings.

32. His own limited experience as a member of the Sub-Commission had shown that the secretariat had been discharging its duties effectively and promptly in all matters assigned to it. It was essential that its members should be allowed to work free from any interference by the Governments of their countries of origin.

33. Mr. Eide took the Chair.

34. Mr. JOINET said that the question of the independence of staff members was not really a problem. The person who had been referred to was not an international civil servant, so no more time needed to be spent on discussing the matter.

35. He had certain reservations about the idea of meeting in New York. There would certainly be more interaction with the media, but he wondered whether that was really desirable. Geneva provided a more serene setting from which to promote human rights. Moreover, in the past attempts had been made to repatriate the United Nations human rights operation to New York in order to keep it better under control.

36. The question of gross and large-scale violations of human rights as an international crime might be more within the competence of the International Law Commission, whose attention could perhaps be drawn to it. If, in order not to overburden the system, only one further study could be made, his preference would be for Mrs. Palley's proposed study on the humanitarian implications of human rights.

37. Mr. HAKIM said that the arrangement whereby the consideration of agenda item 6 began on the second day of the session had turned out to be a success and should be continued. The adoption of the 1503 procedure had produced improvements because States generally liked to have a good reputation. He agreed with Mr. Eide that neither the experts of the Sub-Commission nor the members of the secretariat were biased in their work, although some minor mistakes might occasionally occur simply because to err was part of the human condition. In the years of its existence the Sub-Commission had certainly brought some comfort to people in the world, as he personally had seen. For instance, a resolution on the abolition of child labour adopted by one of the Sub-Commission's working groups had soon after been followed by demonstrations in Bangladesh which had led to the prohibition of manual labour under the age of 16 and the making of advantageous arrangements for the working children involved to study instead. That was just one example of the progress that had been made. It was not spectacular, but civilization was built up only slowly.

38. Thanks were due to Mr. Boutkevitch for the work which he had done, while Mr. Chernichenko's proposed research would be of great value.

39. Mr. Maxim resumed the Chair.

40. Mrs. FORERO UCROS said that the changes in the treatment of item 6 had been beneficial. There had not been enough time and dialogue however for a really in-depth discussion.

41. She agreed with Mrs. Palley that the Sub-Commission could change the way in which it discussed country situations and also that it could have further meetings in New York or Geneva. It might also look at how the Inter-American Commission on Human Rights worked; in that body non-governmental organizations and States both had the opportunity and enough time in meetings to express their views separately from members of the Commission itself. There were also joint meetings when friendly discussions took place on the Inter-American Convention on Human Rights. The Sub-Commission really needed more time and a different methodology if it was to perform its work on item 6 properly.

42. At times it seemed that resolutions appeared at the wave of a magic wand and sometimes, for lack of time and information, neither NGOs, nor members nor observers for Governments could give them the attention they deserved. In

particular she was opposed to having resolutions containing collective pronouncements on a number of countries. That was not because she wished to avoid an analysis of a particular country. That type of collective treatment was, however, a superficial substitute for the in-depth analysis which the Sub-Commission should have under item 6. The discussion on item 6 should be in much greater depth and there should be more dialogue so that the experts could reflect very seriously on the issues.

43. Mr. LINDGREN ALVES said he was glad that the misunderstanding about the proposal to advance consideration of item 6 was over. The rationale of the change in the order of work had been simply to avoid a repetition in the Sub-Commission of the chaos which overwhelmed the Commission when it addressed item 12.

44. Problems still remained, not specifically on item 6, but they started with that item. Non-governmental organizations tended to repeat under other items points they had raised under item 6. The result was a multiplicity of rights of reply. There was a need for a code of conduct for the avoidance of such repetitions. Rights of reply did not generally provide clarification; instead they tended to become aggressive exchanges between Governments. It might be advisable to adopt the same practice as the Commission, namely, that rights of reply should be heard at the end of the consideration of the item and not at the end of each day. Perhaps one hour could be set aside at the end of each item for rights of reply.

45. He welcomed Mr. Hatano's proposal regarding closed meetings. He also welcomed Mr. Eide's comments on the contribution which the Sub-Commission had made to the cause of human rights. Some of the achievements in that field stemmed from proposals which had originated in the Sub-Commission.

46. He doubted the usefulness of the joint meetings with CERD. The meeting during the current session had produced not one single new idea. Moreover CERD's mandate differed too widely from that of the Sub-Commission to make meaningful dialogue possible.

47. One non-governmental organization had questioned the independence of experts and had proposed that no civil servants should become members of the Sub-Commission. The implementation of such a proposal would result in the Sub-Commission becoming no more than one additional non-governmental organization. He was himself a civil servant but he received no instructions from his Government. The same was true of other experts.

48. Mrs. Palley had raised the issue of a second session. The question arose however as to whether the experts would be able to attend two sessions in one year. That problem might be overcome by holding two shortened sessions, each of 15 days. He questioned however whether that would help the Sub-Commission's work. In any case, the Sub-Commission should not meet during the General Assembly in New York as the press would pay no attention to the Sub-Commission's work during that period.

49. Mrs. WARZAZI said that it was difficult to judge an expert. The duty of an expert was to listen to NGOs and Governments and to obtain as much information as possible on the particular issue under discussion and, in the light of what had been learned, reach the decision dictated by his or her own conscience. An expert should not toe the line of either a Government or an NGO. In her own case, it should be clear to all that she had always been independent; she owed nothing to any Government.

50. There had been a great deal of talk about dialogue and she agreed with much of what had been said. What had been overlooked however was the need to lay special emphasis on dialogue between the experts themselves. For lack of time there was very little such dialogue. Nor did the Sub-Commission's overloaded agenda leave time to respond to the requirements of NGOs and Governments and to hear all the information which those bodies were anxious to provide.

51. At its next session the Sub-Commission must find a way to set aside an hour before the end of a meeting for the experts to meet NGOs and government representatives. That would help it to avoid continuing to produce draft resolutions that nobody knew anything about.

52. She had listened with interest to Mrs. Palley's recommendations which might be likened to the fall of the Berlin Wall.

53. Mr. CHERNICHENKO said that the Sub-Commission might consider asking experts to prepare brief working documents on the ideas they had expressed. Those should be quite short papers which could be looked over by a working group and perhaps consolidated into a single document. It was essential however for the Sub-Commission to have a proper procedural system so that it would avoid repeating itself at the next session.

54. Mr. Joinet had commented on his study and had expressed some doubt as to whether the topic was within the mandate of the Sub-Commission and had asked whether it might be more appropriately dealt with by the International Law Commission. The International Law Commission did not however deal with those particular problems. It had a very heavy and clearly defined work programme and would not have time to pursue the matter for at least 10 years. Mr. Joinet had also said that the Sub-Commission had established limits on the number of studies which it could undertake. That problem had not arisen the previous year nor during the present session. From the procedural point of view, Mr. Joinet's doubts did not seem to be well founded.

55. Mr. EIDE said that, in his earlier statement, he had not intended to imply that any staff member was actually taking instructions from any Government. He had merely wished to indicate that it was important that Governments should not try to give instructions to staff members; in the past that had occasionally happened. He wished to join Mr. Joinet in expressing full confidence in current staff members.

56. He congratulated Mr. Ali Khan on his constructive reinterpretation of Mrs. Palley's statement when he had suggested that the Sub-Commission's session should be divided into two. One session might deal with issues relating to violations and communications while the other session could be

devoted to thematic issues. He was somewhat reluctant to contemplate a session in New York. The idea of having two different sessions with different orientations was however a good one.

57. One point relating to the work of the Sub-Commission concerned Governments. In his view it would be unfortunate if Governments started to criticize each other in the Sub-Commission; that would lead to rights of reply and a waste of the Sub-Commission's time. Such matters might more properly be dealt with in the Commission; they were outside the Sub-Commission's mandate.

58. Mr. KHALIFA said that for some time past he had been somewhat reluctant to think about the improvement of the modalities of the Sub-Commission's work. The reason was that, in the early 1980s, the Sub-Commission had set up a working group entrusted with that task. The working group had made a few good suggestions; indeed some of the ideas which had been expressed during the current meeting had already been voiced by the working group. Together with a few colleagues he had fought, over a period of years, to break away from the Commission on the grounds that the Sub-Commission was being reduced to the status of a mini-Commission which would deal with matters with very heavy political overtones. The group had thought that the Sub-Commission should be free of any links with the Commission in order to be able to carry out its work as true experts. The Commission had been very paternalistic in its attitude and the Sub-Commission had been told to behave and never to raise its voice again. He had then become discouraged about the possibility of changing the modalities of the Sub-Commission. The time might however be ripe to have another look at the working group's report and, as Mr. Chernichenko had suggested, put together some suggestions.

59. On the question of meeting in New York, from his own past experience during the time when the Sub-Commission had met in New York during the 1970s before the Centre for Human Rights had been moved to Geneva, he was firmly convinced that Geneva was the right place for the Sub-Commission to meet. In New York the Sub-Commission had been hounded by the media to the point of defamation and threats. The issues considered by the Sub-Commission were very sensitive and the media had been very attentive and motivated. Geneva was the right place and the media in Geneva should be thanked for leaving the Sub-Commission in peace.

The meeting rose at 1 p.m.